

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON  
PORTLAND DIVISION

**C. MICHAEL GONZALEZ-AGUILERA,**

Petitioner,

v.

**STEVE FRANKE,**

Respondent.

No. 2:12-cv-01745-SU

OPINION AND ORDER

**MOSMAN, J.,**

On December 6, 2012, Magistrate Judge Sullivan issued her Findings and Recommendation (“F&R”) [13] in the above-captioned case, recommending that this Petition for Writ of Habeas Corpus [2] be dismissed without prejudice for lack of jurisdiction. In addition, she recommended that I decline to issue a Certificate of Appealability on the basis that petitioner has not made a substantial showing of the denial of a constitutional right pursuant to 28 U.S.C. § 2253(c)(2). No objections were filed.

**DISCUSSION**

The magistrate judge makes only recommendations to the court, to which any party may file written objections. The court is not bound by the recommendations of the magistrate judge, but retains responsibility for making the final determination. The court is generally required to make a de novo determination regarding those portions of the report or specified findings or

recommendation as to which an objection is made. 28 U.S.C. § 636(b)(1)(C). However, the court is not required to review, de novo or under any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the F&R to which no objections are addressed. *See Thomas v. Arn*, 474 U.S. 140, 149 (1985); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003). While the level of scrutiny under which I am required to review the F&R depends on whether or not objections have been filed, in either case, I am free to accept, reject, or modify any part of the F&R. 28 U.S.C. § 636(b)(1)(C).

Upon review, I agree with Judge Sullivan's recommendation, and I ADOPT the F&R [13] as my own opinion.

IT IS SO ORDERED.

DATED this 4th day of January, 2013.

/s/ Michael W. Mosman  
MICHAEL W. MOSMAN  
United States District Judge